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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Kitsukawa)	Art Unit: 2421
)	
Serial No.: 09/802,635)	Examiner: Lonsberry
)	
Filed: March 9, 2001)	50P4371
)	
For: SYSTEM AND METHOD FOR BILLING FOR)	March 6, 2009
INTERACTIVE TELEVISION)	750 B STREET, Suite 3120
)	San Diego, CA 92101
)	

REPLY BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This responds to the Examiner's Answer dated March 5, 2009 responding to Appellant's Appeal Brief dated December 18, 2006. This Answer repeats essentially verbatim the previous Answer and was made necessary by a remand from the Board over a year ago, in November 2007. Since this Answer could have, but failed to, address issues in the prior Reply Brief dated April 10, 2007, under the terms of this Answer, page 11, first full paragraph, the conferees have conceded the points in the prior Reply Brief (declaring that "any further arguments that the appellant could have made...are considered as having been conceded by the appellant"; the Answer cannot fairly be read as imposing only a one-way requirement on Appellant that the conferees themselves did not have to meet).

Furthermore, since this appeal was filed, KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727 (2007) issued. The Answer chooses to ignore the new KSR rationales by repeating the grounds for rejection that were rendered under the pre-KSR teaching-suggestion-motivation (TSM)-only test, in fact never relying on KSR.

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Accordingly, and again under the explicit terms of the Answer itself, non-TSM KSR tests for unpatentability have been waived by the conferees. This means that the Answer appropriately should be reviewed for error under the TSM test without regard to non-TSM KSR rationales, since none of those rationales have been used in the Answer and moreover have been "conceded" under the terms of the Answer.

For convenience, those points from Appellant's prior Reply Brief that have been conceded under the terms of the Answer itself are summarized as follows.

In response to Appellant's trenchant observation that, since Urakoshi nowhere mentions virtual channels and Connelly nowhere mentions the access restriction table then there is no prior art suggestion to combine, the conferees miss the point by arguing that "the rejection does not rely upon Urakoshi to teach virtual channels." Appellant's point, however, is that there is no apparent reason under the TSM test relied on in the Answer to combine the two references to arrive at the claims. The only "rationale" given on page 13 of the Answer is to state that "it is advantageous to allow parents to control the content that their child accesses". However, for reasons propounded in the Appeal Brief, Urakoshi does not teach, among other things, the claimed "flag for each channel"; thus, regardless of the lack of TSM for the proffered suggestion to combine (the first ground for a finding of *clear error*), the proposed combination lacks the missing element (and incidentally in contrast to KSR even though the non-TSM tests of KSR have been waived). As a consequence, *clear error* underpins the rejections whether the pre-KSR TSM test is used or whether the Board should choose to consider a post-KSR non-TSM test.

Note that in relying on the TSM test, the conferees commit further *clear error* by never pointing to any evidence of the skill in the art or even identifying the level of skill being relied on.

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The Answer concedes, for reasons above, Appellant's point that the discussion in col. 8 of Urakoshi has nothing to do with the relied-upon menu 50. Having conceded this, the rejections can only be regarded as being based on *clear error*.

Appellant's arguments regarding Claim 4 in the prior Reply Brief have not been addressed and thus are conceded under the explicit conditions imposed by the Answer itself. With this argument conceded, the rejection of Claim 4 is further *clear error*.

Respectfully submitted,



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